

EP DETERMINATIONS QUALITY ASSURANCE BULLETIN

FY-2008 No. 2

Date: May 12, 2008

CORRECTING PRE-APPROVED MASTER, PROTOTYPE AND VOLUME SUBMITTER PLAN LANGUAGE

Question

How do we handle master, prototype, and volume submitter plans (collectively referred to as pre-approved plans) where a specialist working a Form 5307 submission or an agent on examination finds what they believe to be an error in the pre-approved plan language?

Answer

If a specialist/agent finds what appears to be an error in the language of a pre-approved plan, they should **not** request amendments to such language. Instead, they should accept the language as previously approved. In addition, they should complete a referral, (copy attached) and forward it, along with a copy of the plan language in question, to the attention of the pre-approved plan coordinator at the following address:

Angelo Noe
Pre-approved Plan Coordinator
P.O. Box 2508, Room 5106
Cincinnati, Ohio 45201

Appropriate personnel will review this information and determine what further action, if any, is necessary. Please keep in mind that with the reliance afforded adopting employers of pre-approved plans by Revenue Procedure 2005-16, any correction obtained to pre-approved language can only be required on a prospective basis.

The referral form should be signed by both the originating specialist/agent and their manager. Please ensure that both signatures are secured before forwarding the form. Item 6 should be completed to explain what the problem is and why the specialist/agent believes the language is incorrect. Appropriate citations should be provided.

Please remember that pre-approved plans have been reviewed by senior employee plans specialists from across the country. It is **not** intended that employee plans specialists reviewing Form 5307 submissions, or agents on examination, duplicate this review. This mechanism of reporting technical deficiencies exists for those rare occasions where such deficiencies are found indirectly.

Finally, while this bulletin is primarily directed toward Forms 5307, this same procedure applies to certain Form 5300 submissions. For example, if an employer has adopted an EGTRRA-approved volume submitter plan and modified it in such a way (e.g., modifying a volume submitter profit sharing plan to be an ESOP) that a Form 5300 is required, the agent should only review the modifications; however, a copy of the EGTRRA advisory (approval) letter must be part of the submission for this limited review to apply. The same rule applies where an employer adoption of a plan which is based primarily on an EGTRRA-approved M&P plan will require the submission of Form 5300 (e.g., an employer amends any provision of an M&P plan or its adoption agreement (other than to choose among the options offered by the sponsor if the plan permits or contemplates such options)).

Specialists should refer to Rev. Procs. 2005-16, 2007-44, 2008-6 and Announcement 2008-23 for additional guidance on when a Form 5300 may be required in lieu of Form 5307.

Question

May a specialist/agent challenge any incorrect language found during the review or examination of a plan that is based on a pre-approved plan?

Answer

While a specialist/agent should not challenge language that has been pre-approved, the modification of language or the addition of language that was not pre-approved can be challenged, if appropriate. In addition, pre-approved plans that submit a Form 5300 generally have to be updated to include required changes in the current cumulative list based on the date of submission. Language subsequent to the 2004 cumulative list for defined contribution plans, (the 2006 cumulative list for defined benefit plans), can also be challenged if necessary.

Please refer to Announcement 2008-23 and section 19 of Rev. Proc. 2007-44 for additional guidance on the effect of employer amendments to pre-approved plans.

Referral for Pre-Approved Language

Circle type of referral in item 1 and forward to the pre-approved plan coordinator..

	<i>Volume Submitter Plans</i>	<i>Prototype Plans</i>
1. To:		
	P.O. Box 2508, Room 5106	P.O. Box 2508, Room 5106
	Cincinnati, OH 45201	Cincinnati, OH 45201
2. From	Name of originator (Print or Type)	Address of originator
3. Name and Address of Pre-Approved Plan Sponsor		4. Plan Name and Number
5. Date and Serial Number of Letter		
6. Explanation of issue (Include copies of the plan section(s))		
7. Signature of originator	Title	Date
8. Signature of manager		Date
For Coordinator Use		
9. Received by	Action Taken	Date Closed